UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/600,223	06/20/2003	Sudhindra P. Herle	2003.07.011.WT0	9788

7590 04/19/2007		EXAMINER
Docket Clerk		RAMPURIA, SATISH
P.O. Drawer 800889		
Dallas, TX 75380		

	ART UNIT	PAPER NUMBER
	2191	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/19/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

PTOL-90A (Rev. 10/06)

	Application No.	Applicant(s)
Office Action Summary	10/600,223	HERLE, SUDHINDRA P.
	Examiner	Art Unit	
	Satish S. Rampuria	2191	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on <u>23 February 2007</u>.

2a) ☒ This action is **FINAL**.   2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) <u>1-24</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) <u>1-24</u> is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a) ☐ All   b) ☐ Some * c) ☐ None of:

      1. ☐ Certified copies of the priority documents have been received.

      2. ☐ Certified copies of the priority documents have been received in Application No. _____.

      3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

Response to Amendment

1.   This action is in response to the amendment filed on 02/23/2007.

2.   The objection to specification due to misspell is withdrawn in view of Applicant's

amendment.

3.   Claims 1-24 are pending.

Response to Arguments

4.   Applicant's arguments filed 02/23/2007 have been fully considered but they are

not persuasive.

In the remarks, the applicant has argued that:

As can be seen, there is no explicit teaching of a CPU or other processor at all, although it is of course reasonable to assume that a processor must be present to perform the tasks described. O'Neill does not teach or suggest a first CPU capable of controlling wireless communications with a wireless network, having a first memory associated with it. O'Neill does not teach or suggest a second CPU capable of executing an end-user application on the wireless communication device, and a second memory associated with it. O'Neill certainly does not teach or suggest that the first CPU downloads a software upgrade file from a wireless network and stores the downloaded software upgrade file in the second memory.
O'Neill therefore does not teach or suggest the limitations of independent claim 1, or similar limitations of independent claim 13. All rejections are therefore traversed.
Further, as O'Neill does not teach or suggest multiple processors, it does not teach or suggest an interprocessor communication unit as in claims 4 and 7.
O'Neill further does not teach or suggest the specific code replacement as claimed, e.g., in claims 2 and 9.
Accordingly, the Applicant respectfully requests the Examiner to withdraw the § 102 rejection with respect to all claims.

Examiner's response:

Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount

to a general allegation that the claims define a patentable invention without specifically

pointing out how the language of the claims patentably distinguishes them from the

references.

5.   **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time

policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later

than SIX MONTHS from the mailing date of this final action.

Claim Rejections - 35 USC § 102

6.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102

that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --
(e) the invention was described in (1) an application for patent, published under section 122(b), by another
filed in the United States before the invention by the applicant for patent or (2) a patent granted on an
application for patent by another filed in the United States before the invention by the applicant for patent,
except that an international application filed under the treaty defined in section 351(a) shall have the effects
for purposes of this subsection of an application filed in the United States only if the international application
designated the United States and was published under Article 21(2) of such treaty in the English language.

7.   Claims 1-24 are rejected under 35 U.S.C. 102(e) as being anticipated by US

Publication No. 2004/0068721 to O'Neill et al. (hereinafter, O'Neill).

Per claim 1:

O'Neill discloses:

- A wireless communication device capable of accessing a wireless network and downloading a software upgrade file therefrom (paragraph [0011] "provide software updates to one or more wireless communication devices"), said wireless communication device comprising:

- a first central processing unit (CPU) capable of controlling wireless communications with said wireless network (paragraph [0014] "...distribution environment provides a suitable distribution node... communication device");

- a first memory associated with said first CPU (paragraph [0032] "...non-volatile memory... and a volatile memory" Also See Fig. 2 and related discussion);

- a second central processing unit (CPU) capable of executing at least one end-user application on said wireless communication device (paragraph [0011] "...software updates are generated by executing the software processing package...resident...device to be updated"); and

- a second memory associated with said second CPU (paragraph [0032] "...non-volatile memory... and a volatile memory" Also See Fig. 2 and related discussion), wherein said first CPU downloads said software upgrade file from said wireless network and stores said downloaded software upgrade file in said second memory (paragraph [0032] "download agent...download...software from distribution... upload agent... uploads software... in the wireless communication device...in the non-volatile memory...software update...").

Per claim 2:

The rejection of claim 1 is incorporated and further, O'Neill discloses:

- wherein said first CPU is capable of executing a first upgrade agent program that

    replaces first existing code associated with a first existing software file in said first

    memory with first replacement code from said downloaded software upgrade file

    (paragraph [0032] "download agent...download...software from distribution...

    upload agent... uploads software... in the wireless communication device...in the

    non-volatile memory...software update...").

Per claim 3:

The rejection of claim 2 is incorporated and further, O'Neill discloses:

- wherein said first upgrade agent program is stored in said first memory

    ((paragraph [0032] "download agent...download...software from distribution...

    upload agent... uploads software... in the wireless communication device...in the

    non-volatile memory...software update..." Also See Fig. 2, element 221 and

    related discussion).

Per claim 4:

The rejection of claim 3 is incorporated and further, O'Neill discloses:

- wherein said downloaded software upgrade file is transferred from said second

    memory to said first memory by an interprocessor communication unit

    (paragraph [0032] "download agent...download...software from distribution...

upload agent... uploads software... in the wireless communication device...in the non-volatile memory...software update..." Also See Fig. 2, element 223).

Per claim 5:

The rejection of claim 4 is incorporated and further, O'Neill discloses:

- wherein said first CPU executes said first upgrade agent program after said downloaded software upgrade file is transferred into said first memory from said second memory (paragraph [0032] "download agent...download...software from distribution... upload agent... uploads software... in the wireless communication device...in the non-volatile memory...software update...").

Per claim 6:

The rejection of claim 3 is incorporated and further, O'Neill discloses:

- wherein said first upgrade agent program is transferred from said second memory and stored in said first memory (paragraph [0032] "download agent...download...software from distribution... upload agent... uploads software... in the wireless communication device...in the non-volatile memory...software update..." Also See Fig. 2, element 223).

Per claim 7:

The rejection of claim 6 is incorporated and further, O'Neill discloses:

- wherein said downloaded software upgrade file and said first upgrade agent

    program are transferred from said second memory to said first memory by an

    interprocessor communication unit (paragraph [0032] "download

    agent...download...software from distribution... upload agent... uploads

    software... in the wireless communication device...in the non-volatile

    memory...software update..." Also See Fig. 2, element 223).

Per claim 8:

The rejection of claim 7 is incorporated and further, O'Neill discloses:

- wherein said first CPU executes said first upgrade agent program after said

    downloaded software upgrade file is transferred into said first memory from said

    second memory (paragraph [0037] "software updates may be downloaded and

    easily executed using one or more update, download, and upload agents of the

    primary update environment in conjunction with one or more software

    applications, components, and/or firmware resident in memory of the wireless

    communication device").

Per claim 9:

The rejection of claim 2 is incorporated and further, O'Neill discloses:

- wherein said second CPU is capable of executing a second upgrade agent

    program that replaces second existing code associated with a second existing

    software file in said second memory with second replacement code from said

downloaded software upgrade file (paragraph [0037] "software updates may be

downloaded and easily executed using one or more update, download, and

upload agents of the primary update environment in conjunction with one or more

software applications, components, and/or firmware resident in memory of the

wireless communication device").

Per claim 10:

The rejection of claim 9 is incorporated and further, O'Neill discloses:

- wherein said second upgrade agent program is stored in said second memory

  (paragraph [0032] "download agent...download...software from distribution...

  upload agent... uploads software... in the wireless communication device...in the

  non-volatile memory...software update..." Also See Fig. 2, element 221 and

  related discussion).

Per claim 11:

The rejection of claim 10 is incorporated and further, O'Neill discloses:

- wherein said second upgrade agent program is transferred from said first

  memory and stored in said second memory (paragraph [0032] "download

  agent...download...software from distribution... upload agent... uploads

  software... in the wireless communication device...in the non-volatile

  memory...software update...").

Per claim 12:

The rejection of claim 11 is incorporated and further, O'Neill discloses:

- wherein said second CPU executes said second upgrade agent program after

    said second upgrade agent program is transferred into said second memory from

    said first memory (paragraph [0037] "software updates may be downloaded and

    easily executed using one or more update, download, and upload agents of the

    primary update environment in conjunction with one or more software

    applications, components, and/or firmware resident in memory of the wireless

    communication device").

Claims 13-24 are the method claim corresponding to apparatus claims 1-12

respectively, and rejected under the same rational set forth in connection with the

rejection of claims 1-12 respectively, as noted above.

Conclusion

8.   The prior art made of record and not relied upon is considered pertinent to

applicant's disclosure.

Any inquiry concerning this communication or earlier communications from

the examiner should be directed to **Satish S. Rampuria** whose telephone number

is **(571) 272-3732**. The examiner can normally be reached on **8:30 am to 5:00 pm**

Monday to Friday except every other Friday and federal holidays. Any inquiry of a

general nature or relating to the status of this application should be directed to the

TC 2100 Group receptionist: 571-272-2100.

If attempts to reach the examiner by telephone are unsuccessful, the

examiner's supervisor, **Wei Y. Zhen** can be reached on **(571) 272-3708**. The fax

phone number for the organization where this application or proceeding is assigned

is **571-273-8300**.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR

only. For more information about the PAIR system, see http://pair-direct.uspto.gov.

Should you have questions on access to the Private PAIR system, contact the

Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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